

AMENDED IN SENATE JUNE 7, 2006

Senate Joint Resolution

No. 28

Introduced by Senator Figueroa
(Coauthor: Senator Kuehl)

March 9, 2006

Senate Joint Resolution No. 28—Relative to international trade agreements and public health services.

LEGISLATIVE COUNSEL'S DIGEST

SJR 28, as amended, Figueroa. International trade agreements: public health services.

This measure would memorialize the President, ~~the~~ *and* Congress of the United States; and the United States Trade Representative to take specified actions to preserve the traditional powers of state and local governments and regulate fair competition in international rules on trade in services, and specifically with respect to health-related issues.

Fiscal committee: no.

- 1 WHEREAS, Health care services are some of the most rapidly
2 growing areas of economic activity worldwide, as evidenced by
3 the increased flow of information, personnel, and patients
4 seeking treatment; and
5 WHEREAS, The United States government, through the
6 United States Trade Representative (USTR) is negotiating the
7 General Agreement on Trade in Services (GATS), which is one
8 of the agreements under the World Trade Organization (WTO);
9 and
10 WHEREAS, GATS negotiators from the United States and
11 from other nations have sought an expansion both in the number

1 of economic sectors covered by this global agreement, as well as
2 a broadening of GATS disciplines so as to limit the traditional
3 scope of government authority. Examples of this include all of
4 the following:

5 (a) The GATS “national treatment” rule that allows for a
6 challenge to federal and state laws on the grounds that these laws
7 may discriminate against foreign service suppliers, even if the
8 law itself has no discriminatory purpose.

9 (b) The GATS “market access” rule that can greatly
10 complicate regulation of services in the public service by, for
11 example, forbidding many traditional strategies for protecting the
12 public interest, such as exclusive supplier contracts, certificates
13 of need for hospitals and schools, or limits on the corporate form
14 of ownership of public assets or services.

15 (c) The GATS provisions on “domestic regulation” currently
16 being negotiated that could impose “necessity tests” and “least
17 burdensome” rules on government regulation of services, as
18 opposed to the traditional standard that a regulation must have a
19 rational basis for protecting the public interest; and

20 WHEREAS, The United States service economy accounts for
21 \$58 billion a year, including 28 percent of all exports and 80
22 percent of all new jobs created, and many services are regulated
23 or provided by state and local government, making the risk of
24 conflict between GATS rules and state or local laws relatively
25 high; and

26 WHEREAS, Under the GATS, countries choose which service
27 sectors they will commit to the coverage of the agreement, and
28 are also allowed to make exemptions and other special notes on
29 those commitments; and

30 WHEREAS, The United States has made commitments in
31 health-related service sectors, including hospital services, health
32 insurance, distribution of goods, including medicines, and
33 medical devices, and other countries have requested that the
34 United States make additional commitments in health service
35 sectors; and

36 WHEREAS, The health-related laws and regulations that
37 could be affected by GATS rules include clinician licensing,
38 prescription drug cost controls, controls on the distribution of
39 medicines, medical devices, alcohol, tobacco and firearms,
40 privacy rules, requirements to allocate medical equipment and

1 services based on need, health insurance regulations,
2 environmental protections, and occupational safety and health
3 regulations; and

4 WHEREAS, Several major United States trading partners have
5 advanced aggressive proposals on Mode IV, which would allow
6 for the temporary migration of health care workers. However,
7 these proposals are not accompanied by any safeguards with
8 respect to either the rights of these workers or the impact on
9 California health quality standards of increased reliance on a
10 transitory workforce; and

11 WHEREAS, The Federation of Canadian Municipalities
12 adopted a resolution in May 2001 that called upon the Canadian
13 federal government to “bring forward a proposal to the WTO to
14 exclude local governments and authorities” from the scope of
15 services covered by the GATS; now, therefore, be it

16 *Resolved by the Senate and the Assembly of the State of*
17 *California, jointly,* That the Legislature respectfully
18 memorializes the President, the Congress of the United States,
19 and the United States Trade Representative to do all of the
20 following:

21 (a) Preserve the traditional powers of state and local
22 governments, including powers to protect public health, conserve
23 environmental resources, and regulate fair competition, in
24 international rules on trade in services.

25 ~~(b) Carve state and local government actions out of the scope~~
26 ~~of international trade agreements until such time as the United~~
27 ~~States Trade Representative consults~~ *Consult* with state and local
28 officials regarding provisions of trade or investment agreements.
29 The consultations should be much broader than for previous
30 agreements and allow for the inclusion of all representatives of
31 interested state and local governments. The consultation should
32 also provide for a review and discussion of all sectors pertaining
33 to health care, so that California authorities can understand the
34 extent of existing commitments, the implications of proposed
35 commitments, the possible impacts on health care workers, and
36 opportunities for developing appropriate safeguards.

37 (c) Guarantee all Mode IV temporary workers equal rights
38 under national and state worker protection laws, prevent
39 exploitation by employers, and protect them against all forms of
40 discrimination.

1 (d) Take swift action to ensure that public health experts are
2 placed on the Industry Trade Advisory Committees concerned
3 with public health and health care; and be it further
4 *Resolved*, That the Secretary of the Senate transmit copies of
5 this resolution to the President and Vice President of the United
6 States, to the United States Trade Representative, to the Speaker
7 of the House of Representatives, to each Senator and
8 Representative from California in the Congress of the United
9 States, to the Governor, and to the Attorney General.

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